

Modern Alaska Tupik fishermen set out for a day of salmon netting in Bristol Bay, Alaska.

Credit: NOAA Central Library Photo Collection, Karen Ducey, photographer



# NATIVE FISHERS

## PRESERVING RIGHTS AND TRADITIONS

BY DAVID A. BROWN

Forty-four million — that's how many recreational anglers bend a rod each year in this country. No doubt, American Sport Fishing Association statistics paint this pastime as a rewarding outdoor pursuit.

But in some cases, the practice of harvesting fish from local waters reaches much deeper than just a fun, wholesome family activity. For certain well-defined groups, fishing stands as a pillar of their society — a time-honored tradition appearing in art, rituals, and folklore.

"As an individual recreational angler, fishing can be very important, even on a spiritual level, but most people probably don't consider it an important expression of the state in which they reside," said Gary Sims, Tribal Liaison for NOAA Fisheries' Northwest Region, "whereas a lot of tribal fishers are very aware that their ability to fish is the expression of their right as a people that they reserved when negotiating with the U.S. government."

In the Pacific Northwest, tribes of the Columbia River Basin and Puget Sound/

Washington Coast exemplify the rich heritage of native fishing. Carrying on the salmon-centered lifestyle of their ancestors, many of these groups are often referred to as "treaty tribes," in recognition of their agreements with the United States government.

In 1855, these tribes ceded most of their land and agreed to settle on reservations in exchange for monetary payments and governmental assistance such as health care, education, protection, and legal assistance. Treaties

recognized tribes as sovereign entities with the rights of self-government and religious freedom.

Columbia River Indians made their agreements in the Treaty with the Walla Walla, Cayuse, and Umatilla Tribes; the Treaty with the Yakama; the Treaty with the Nez Perce; and the Middle Tribes of Oregon Treaty. Tribes in the Puget Sound area agreed to the treaties of Medicine Creek, Neah Bay, Olympia, Point Elliott, and Point No Point.

Integral to each of these treaties were the tribal rights to hunt and fish not only on their reservations, but also on the land that they ceded to the U.S. government. (Treaty text states the right to take fish "at usual and accustomed grounds and stations.") Believing that the fishery resources were not theirs to sell in the first place, the Indians reserved these rights, as spelled out in the treaties that were ratified by Congress.

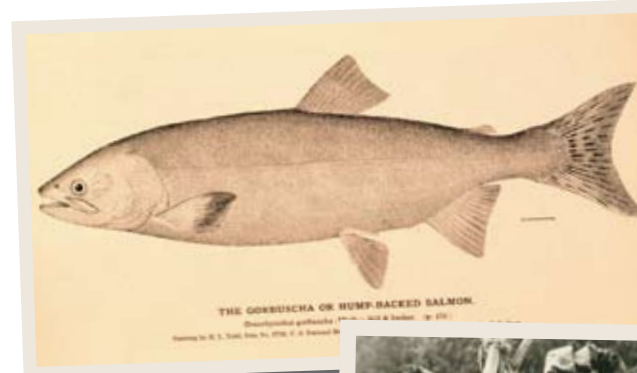
Now, Native American fishing ranges from Alaskan tribes to the Penobscot and Passamaquoddy tribes of eastern Maine; and to Western Pacific indigenous groups of Guam, American Samoa, the Mariana Islands, and the Hawaiian Islands. But, while treaties do not apply to all indigenous groups of the United States and its territories, the tribes of the Pacific Northwest provide a vibrant example of NOAA's ongoing efforts to balance resource management with the customs of native fishers, whose very identity exists in union with the fish swimming throughout the coastal and riverine waterways of their ancestral lands.

"You need to think of it as a spiritual, cultural, and sovereign experience," Sims

said of the region's native fishers. "Most of the tribes in the Columbia River Basin and Puget Sound/Washington Coast area will call themselves a 'Salmon People' because the fish have a long, deep, and abiding history among these people.

trust of the treaty agreements. Justices ruled that treaty Indians had reserved the right to cross non-Indian lands to fish at the "usual and accustomed" places, and that treaties are to be interpreted the way Indians had understood them.

Two of the most historic decisions came through *U.S. v. Oregon* (1969) and *U.S. v. Washington* (1974). In the former, U.S. District court Judge Robert Belloni held that tribes were entitled to a "fair share"



"So there's a spiritual connection, not only with the salmon but also with the Creator who gave them the salmon as a gift and made them responsible for protecting it. As individuals and as individuals coming together as a group, salmon helped define them as a people and how they related to the world."

Since the treaties of the 1850s, many questions regarding interpretations of and challenges to these agreements have arisen. Some have led to court cases with great significance for the Indians of the Pacific Northwest.

The first major fishing rights case to reach the Supreme Court, *U.S. v. Winans* (1905), did much to uphold the honor and

Salmon fishing with large loop nets by Native Americans. Tribal tradition determines the spot from which each tribal member fishes. Credit: NOAA Central Library Photo Collection



A tribesman dipnets returning salmon from a wooden platform on the Columbia River in the 1950s. Credit: Scientific Publications Unit, NOAA Fisheries Service



Center of page: The Gorbusha or hump-backed salmon, *Oncorhynchus gorbuscha*.

Credit: NOAA Central Library Photo Collection

Above: An early-20th century Northwest tribal elder cures salmon fillets on a smoking frame. Credit: Courtesy of Pacific Fishing Magazine





A Native Alaskan radios to shore with good news about his salmon catch.

Credit: NOAA Central Library Photo Collection

of the fish runs and that the state can only regulate treaty Indian fisheries when “reasonable and necessary for conservation.” The ruling clarified that state conservation regulations were not to discriminate against the Indians and must use the least restrictive means.

Known as the “Boldt decision” in reference to the presiding judge, the *U.S. v. Washington* ruling mandated that a “fair share” was 50 percent of the harvestable fish destined for the tribe’s usual and accustomed fishing places. The decision also reaffirmed tribal management powers. The Boldt decision’s 50/50 principle was applied to Oregon’s Columbia River fisheries.

Other relevant cases included:

- *Tulee v. Washington*, 1942: The Supreme Court ruled that because a treaty takes precedence over state law, Indians with tribal treaty rights cannot be required to buy state fishing licenses.

- *Settler v. Lameer*, 1974: The Ninth Circuit Court of Appeals ruled that the treaty fishing right is a tribal right, not an individual right. Therefore, the tribes had reserved the authority to regulate tribal fishing on and off the reservations.

- *U.S. v. Washington* (Boldt decision), 1979: Upheld by U.S. Supreme Court.

In actions related to the Boldt decision, Columbia River, Puget Sound, and Washington coastal tribes sued the Secretary

of Commerce in 1979 because many treaty fish were being caught in ocean waters managed by the Department of Commerce. (Columbia River tribes also sued in 1980, 1981, and 1982.) Ultimately, the court ruled that the federal government was legally obligated to regulate ocean fisheries to ensure that a reasonable number of salmon reached tribal fishing places on the Columbia River.

Tribes of the Pacific Northwest have also faced challenges related to progress and development. Dams on the Columbia and Snake Rivers have drastically altered tribal access to salmon that historically

had migrated considerable distances upriver. Notwithstanding legitimate concerns, not every issue requires litigation, and NOAA Fisheries has a strong history of interacting with tribes, the Bureau of Indian Affairs, and tribal representation groups.

In Oregon, the Columbia River Inter-Tribal Fish Commission (CRITFC) is the technical support and coordinating agency for the fishery management of the Columbia River treaty tribes. In Western Washington, the treaty tribes are supported by the Northwest Indian Fisheries Commission (NWIFC). Such groups staff their own biologist, researchers, and political representatives – all of whom help tribes best represent their positions during discussions with the U.S. government.

Bob Ziobro, Chief of Management and Administration in NOAA’s Office of Management and Budget, formerly served as Native American Liaison for NOAA Fisheries. He mentions a key point of perspective: “It is always important to remember that we have a government-to-government relationship with the tribes.

“Our goals are the same. The tribes want species recovery so that they can exercise their treaty rights. And we want species to recover because we’re mandated under the Endangered Species Act and also by common sense to keep these species from becoming extinct.”



Tupik fishermen from Togiak Bay, Alaska, remove the day’s salmon catch.

Credit: NOAA Central Library Photo Collection



Ziobro said that because of their cultural bond with natural resources, tribes are typically conservation-minded and often institute their own management initiatives. For example, the CRITFC salmon restoration plan ("Spirit of the Salmon") outlines objectives and actions for halting the decline of salmon, lamprey, and sturgeon populations above the Bonneville Dam and rebuilding stock levels to sustainable levels.

Elsewhere, in summer 2006, the Hoh Indian Tribe (NWIFC), launched an innovative program to mark young wild coho salmon (with colored elastomer injections into fins) for the purpose of determining where thousands of these fish go to survive the winter in the Hoh River watershed. Comparing data from recaptured coho will show tribal biologists how fish change their habitat when water levels are lower or higher. Such knowledge will help prioritize the tribe's habitat-restoration initiatives.

As Sims said, NOAA's support of native fishers also means showing due respect for tribal opinions, considering their independent research findings, and factoring all of these elements into management decisions.

"There's a special relationship between the U.S. government and treaty tribes," Sims said. "We have a responsibility to be conferring with tribal governments when we're engaged in activities that may impact tribal resources."

Ziobro stresses that maintaining good rapport proves intrinsic to effecting positive outcomes. "Communication is necessary, along with being forthright. We may not always like what we are hearing, but we have to be able to listen as well as say what is important to us.

"We want the resources to remain sustainable, and from our perspective it's important to understand [the tribes'] cultures and beliefs. It's a highly cooperative adventure, and it has to be, because we can't accomplish anything without one another's help."

*Alaska Native Fisheries  
North Pacific Fishery Management  
Council — [www.fakr.noaa.gov/npfmc/  
current\\_issues/CDQ/CDQ.htm](http://www.fakr.noaa.gov/npfmc/current_issues/CDQ/CDQ.htm)*

*Indigenous Fishing Rights/Community  
Development*

*Western Pacific Fishery Management  
Council — [www.wpcouncil.org/indig-  
enous.htm](http://www.wpcouncil.org/indigenous.htm)*

*Tribal Fishing History and Practices  
Northwest Indian Fisheries Commis-*

*sion — [www.nwifc.wa.gov/  
Pacific Northwest Tribal Harvests and  
Management](http://www.nwifc.wa.gov/PacificNorthwestTribalHarvestsandManagement)*

*NOAA Fisheries Northwest Regional  
Office — [www.nwr.noaa.gov/Salmon-  
Harvest-Hatcheries/State-Tribal-Man-  
agement/Index.cfm](http://www.nwr.noaa.gov/Salmon-Harvest-Hatcheries/State-Tribal-Management/Index.cfm)*

**Nineteenth-century Makah tribesmen hunt whales in the Pacific Northwest.**

*Credit: NOAA Central Library Photo Collection*



## ABORIGINAL WHALING AND CONSERVATION

It's a delicate issue with justifiably emotional elements. But balancing prudent preservation practices with ancient traditions yields an atmosphere that tries for respectful tolerance for aboriginal whaling.

The International Whaling Commission (IWC), established under the 1946 International Convention for the Regulation of Whaling, governs aboriginal and commercial activities. In 1982, the IWC approved a moratorium on all commercial whaling, starting in 1986. However, the Commission regards aboriginal subsistence whaling differently than commercial operations, whose excess plunged several whale species into dire straits.

The IWC's criteria for allowing aboriginal whaling include: ensuring risks of extinction are not seriously

increased (highest priority); enabling harvests in perpetuity appropriate to cultural and nutritional requirements; and maintaining stocks at the highest net recruitment level, with corrective actions taken if that level declines.

American aboriginal whaling is practiced by the Alaskan Eskimos (Inuits) and by the Makah tribe of northwestern Washington State. The targeted species are bowhead whales for the former and gray whales for the latter.

Working in concert with the IWC, these groups have spent considerable time and resources to develop humane whale-hunting techniques that preserve as much of their ancestral heritage as possible. The Makah use high-powered rifles to quickly dispatch their quarry, while Alaskan



**Modern native Alaskan villagers in Pt. Barrow celebrate their heritage after a successful whale hunt.** Credit: NOAA Central Library Photo Collection

hunters use a harpoon with a pen-thrite grenade (exploding tip) for piercing the thick blubber of large bowhead whales.

Kevin Chu, presently in NOAA's Northeast Regional Office, served on the U.S. delegation to the IWC during the 1990s. He said that NOAA has long supported aboriginal whaling in a manner consistent with IWC criteria.

"Our effort to maintain aboriginal whaling is predicated on the requirement that whaling not harm the stocks," Chu said. "If it were driving the stocks to extinction, then there would be no sense in encouraging subsistence whaling, because you would lose the resource, and hence the tradition, anyway."

Steeped in cultural history, whaling links indigenous tribes to their past, while a reverent respect for the resource helps ensure its survival. "It's very important to the community spirit, and we at NOAA have fought hard to keep that going – always with the assumption

that the hunts would not harm the whale populations."

Regarding the IWC's acceptance of aboriginal whaling, Chu notes that "subsistence" is not just food. "(Most aboriginals) could get food from a grocery store. But hamburgers don't have the same historical significance as whale meat. So the cultural aspect is very important. It's keeping body and soul fed."

Chu points out that the tradition of blessing whale meat and giving it to another individual carries deep significance in both the Inuit and Makah societies. "It's very powerful – someone making a gift of whale meat really means something special in the whaling villages."

*Makah Whaling* — [www.makah.com/whaling.htm](http://www.makah.com/whaling.htm)

*International Whaling Commission*

— [www.iwcoffice.org/index.htm](http://www.iwcoffice.org/index.htm)

*NOAA Fisheries Alaska Regional Office/Alaska Eskimo Whaling Commission* — [www.fakr.noaa.gov/omi/grants/aewc.htm](http://www.fakr.noaa.gov/omi/grants/aewc.htm)